

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHEN W. BARTON,

Plaintiff,

v.

SERVE ALL, HELP ALL, INC.,

Defendant.

CASE NO. 3:21-cv-05338-RJB

ORDER DENYING MOTION TO
CERTIFY

This matter comes before the Court on the *pro se* Plaintiff's Motion to Certify Dkt. 136. Dkt. 141. The Court has considered the pleadings filed regarding the motion and the remaining file.

On February 13, 2023, the Order on Cross Motions for Summary Judgment and Motions to Strike (Dkt. 136) was issued. In part, this order granted the Plaintiff's motion for summary judgment on the Defendant's counterclaim for fraud by omission (Dkt. 111) and denied the Plaintiff's motion for summary judgment on the Defendants' remaining counterclaims (Dkt.

111). Dkt. 136. On February 15, 2023, the Plaintiff's motion for reconsideration of that order (Dkt. 138) was denied. Dkt. 140.

The next day, February 16, 2023, the Plaintiff filed the instant "Motion to Certify Dkt. 136," in which he moves the Court to certify the February 13, 2023, order to the Ninth Circuit Court of Appeals for an interlocutory appeal. Dkt. 141. The Plaintiff argues that the Ninth Circuit Court of Appeals should be given an early opportunity to review the Court's decision to deny his motion for summary judgment on the Defendant's counterclaims for fraud and misrepresentation. *Id.*

Pursuant to 28 U.S.C. § 1292(b), certification for an interlocutory appeal is warranted:

When a district judge . . . shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation[.]

"The legislative history of § 1292 suggests that it ought to be used 'only in exceptional situations in which allowing an interlocutory appeal would avoid protracted and expensive litigation.'" *United States v. Hoyte*, 2012 WL 1898926 (W.D. Wash. May 24, 2012) (citing *In re Cement Antitrust Litigation*, 673 F.2d 1020, 1026 (9th Cir. 1982)).

The Plaintiff's motion (Dkt. 141) should be denied. He has not shown that the order involved a "controlling question of law as to which there is substantial ground for difference of opinion." Further, the Plaintiff has not demonstrated that an immediate appeal would "materially advance the ultimate termination of the litigation." Resolution of one or two of the counterclaims on appeal would not eliminate the need for a trial on the Plaintiff's remaining claims. This is not a case in which allowing the interlocutory appeal would "avoid protracted and expensive litigation." The Plaintiff's Motion to Certify Dkt. 136 (Dkt. 141) should be denied.

IT IS SO ORDERED.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 6th day of March, 2023.

Robert Bryan

ROBERT J. BRYAN
United States District Judge